

SENATE BILL No. 177

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-7-11-4; IC 36-7-11.1.

Synopsis: Indianapolis historic preservation commission. Provides that a member of the Indianapolis historic preservation commission (commission) serves at the pleasure of the appointing authority and may be removed for any reason. Provides that a member appointed before July 1, 2010, continues to serve as a member of the commission after June 30, 2010, until the member's term expires or the executive removes the member for any reason. Provides that if the executive removes the member for any reason, the executive appoints a successor to serve for the remainder of the vacated term. Provides that a determination of the commission regarding an application for certificate of appropriateness is subject to review by petition to the city county council. Provides that the city county council shall prescribe the appeal time limits and form by rule. Provides that a decision of the city county council is subject to review by certiorari upon petition to the circuit or superior court of the county. Provides that any appeal of a: (1) pending commission determination on an application for a certificate of appropriateness; or (2) commission determination on an application for a certificate of appropriateness for which a petition for certiorari has not been filed; that is taken after the close of business on June 30, 2010, must be filed with the legislative body of the county. Provides that the legislative body of a municipality or county (excluding Marion County or a municipality in Marion County) may require that a determination of the unit's historic preservation commission upon an application for a certificate of appropriateness must be reviewed by the municipal or county legislative body.

Effective: July 1, 2010.

Miller

January 5, 2010, read first time and referred to Committee on Local Government.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

SENATE BILL No. 177

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 36-7-11-4 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. (a) A unit may
3 establish, by ordinance, a historic preservation commission with an
4 official name designated in the ordinance. The commission must have
5 not less than three (3) nor more than nine (9) voting members, as
6 designated by the ordinance. The voting members shall be appointed
7 by the executive of the unit, subject to the approval of the legislative
8 body. Voting members shall each serve for a term of three (3) years.
9 However, the terms of the original voting members may be for one (1)
10 year, two (2) years, or three (3) years in order for the terms to be
11 staggered, as provided by the ordinance. A vacancy shall be filled for
12 the duration of the term. In the case of a commission with jurisdiction
13 in a city having a population of more than one hundred five thousand
14 (105,000) but less than one hundred twenty thousand (120,000), the
15 commission must after June 30, 2001, include as a voting member the
16 superintendent of the largest school corporation in the city.
17 (b) The ordinance may provide qualifications for members of the



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commission, but members must be residents of the unit who are interested in the preservation and development of historic areas. The members of the commission should include professionals in the disciplines of architectural history, planning, and other disciplines related to historic preservation, to the extent that those professionals are available in the community. The ordinance may also provide for the appointment of advisory members that the legislative body considers appropriate.

(c) The ordinance may:

(1) designate an officer or employee of the unit to act as administrator;

(2) permit the commission to appoint an administrator who shall serve without compensation except reasonable expenses incurred in the performance of the administrator's duties; or

(3) provide that the commission act without the services of an administrator.

(d) Members of the commission shall serve without compensation except for reasonable expenses incurred in the performance of their duties.

(e) The commission shall elect from its membership a chairman and vice chairman, who shall serve for one (1) year and may be reelected.

(f) The commission shall adopt rules consistent with this chapter for the transaction of its business. The rules must include the time and place of regular meetings and a procedure for the calling of special meetings. All meetings of the commission must be open to the public, and a public record of the commission's resolutions, proceedings, and actions must be kept. If the commission has an administrator, the administrator shall act as the commission's secretary. Otherwise, the commission shall elect a secretary from its membership.

(g) The commission shall hold regular meetings, at least monthly, except when it has no business pending.

(h) A decision of the commission is subject to judicial review under IC 4-21.5-5 as if it was a decision of a state agency.

(i) The legislative body of the unit may, by ordinance, provide that the commission's determination upon an application for a certificate of appropriateness may be subject to review by the legislative body of the unit. The review by the legislative body shall be considered a review by a second agency under IC 4-21.5-3-30.

SECTION 2. IC 36-7-11.1-3, AS AMENDED BY P.L.88-2009, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) The executive and the legislative body of the consolidated city shall appoint a commission of nine (9) members

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to be known as the "_____ Historic Preservation Commission" (including the name of the city).

(b) The following apply to the appointment of members:

(1) The executive shall appoint five (5) members of the commission. The executive:

(A) may select two (2) members from lists of names submitted by the Historic Landmarks Foundation of Indiana and the historical society of the consolidated city's county;

(B) may select one (1) member who is a member of the metropolitan development commission; and

(C) may select one (1) member from a list of names submitted by the local chapter of the American Institute of Architects.

(2) The legislative body shall appoint four (4) members of the commission. The legislative body:

(A) shall select one (1) member who is a resident of a historic area of the consolidated city;

(B) may select one (1) member from lists of names submitted by the Historic Landmarks Foundation of Indiana and the historical society of the consolidated city's county; and

(C) may select one (1) member from a list of names submitted by the local chapter of the American Institute of Architects.

(c) **Except as provided in subsection (d),** each appointment to the commission is for a term of four (4) years, commencing on January 1 following the appointment, and until a successor is appointed and is qualified. A member is eligible for reappointment.

(d) A member serves at the pleasure of the appointing authority and may be removed for any reason.

~~(d)~~ (e) If a vacancy occurs in the commission during any term, a successor shall be appointed by the appointing authority to serve for the remainder of the vacated term. ~~Any member of the commission may be removed for cause by the appointing authority.~~ All members must be residents of the county.

~~(e)~~ (f) The members receive no salary, but are entitled to reimbursement for any expenses necessarily incurred in the performance of their duties.

~~(f)~~ (g) At its first scheduled meeting each year, the commission shall hold a meeting for the purpose of organization. The commission shall elect from its membership a president, vice president, secretary, and treasurer who shall perform the duties pertaining to those offices. The officers serve from the date of their election until their successors are elected and qualified. The commission may adopt bylaws and rules for the proper conduct of its proceedings, the carrying out of its duties, and

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the safeguarding of its funds and property. A majority of the members of the commission constitute a quorum, and the concurrence of a majority of the commission is necessary to authorize any action.

(g) (h) A member of the commission is not disqualified from hearing and voting upon any matter coming before the commission because that member owns or occupies property within or adjacent to a historic area, unless that property is the subject property or located within two hundred (200) feet of it.

(h) (i) A member of the commission who is absent from three (3) consecutive regular meetings of the commission shall be treated as if the member had resigned, unless the appointing authority reaffirms the member's appointment. However, the counting of such a member toward a quorum requirement or the voting by such a member does not invalidate any official action taken by the commission before the time that the minutes of the commission reflect that the member has resigned.

SECTION 3. IC 36-7-11.1-3.1, AS ADDED BY P.L.88-2009, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3.1. (a) A member appointed to the commission under section 3 of this chapter before July 1, 2009, shall continue to serve as a member of the commission after June 30, 2009, until:

(1) the end of the term for which the member was appointed; or

(2) the executive removes the member for ~~cause~~ **any reason**.

If the executive removes the member for ~~cause~~ **any reason**, the executive shall appoint a successor to serve for the remainder of the vacated term.

(b) This section expires July 1, 2014.

SECTION 4. IC 36-7-11.1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10. (a) If the commission determines that the proposed construction, reconstruction, alteration, or demolition will be appropriate, the secretary of the commission shall forthwith issue to the applicant a certificate of appropriateness.

(b) The commission may impose any reasonable conditions, consistent with the historic preservation plan, upon the issuance of a certificate of appropriateness, including the requirement of executing and recording covenants or filing a maintenance or performance bond. If the commission determines that a certificate of appropriateness should not be issued, the commission shall forthwith place upon its records the reasons for the determination and may include recommendations respecting the proposed construction, reconstruction, alteration, or demolition. The secretary of the commission shall

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1 forthwith notify the applicant of the determination transmitting to ~~him~~
 2 **the applicant** an attested copy of the reasons and recommendations, if
 3 any, of the commission.

4 (c) Every determination of the commission upon an application for
 5 certificate of appropriateness is subject to review by certiorari upon
 6 petition to the circuit or superior court of the county by any aggrieved
 7 person; in the same manner and subject to the same limitations as a
 8 decision of a board of zoning appeals under IC 36-7-4. However, upon
 9 notice of the filing of the petition for writ of certiorari, all proceedings
 10 and work on the subject premises are automatically stayed.

11 (d) An appeal may be taken to the court of appeals of Indiana from
 12 the final judgment of the court reversing, affirming, or modifying the
 13 determination of the commission in the same manner and upon the
 14 same terms, conditions, and limitations as appeals in other civil actions.

15 SECTION 5. IC 36-7-11.1-10.5 IS ADDED TO THE INDIANA
 16 CODE AS A NEW SECTION TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 2010]: **Sec. 10.5. (a) Every determination of**
 18 **the commission upon an application for a certificate of**
 19 **appropriateness is subject to review upon petition to the legislative**
 20 **body by any aggrieved party.**

21 (b) The legislative body shall adopt rules concerning the filing
 22 of appeals with the legislative body, including rules governing the
 23 giving of notice and the conduct of hearings. Rules adopted by the
 24 legislative body shall be printed and be made available to all
 25 applicants and other interested persons.

26 (c) An appeal filed with the legislative body must specify the
 27 grounds of the appeal and must be filed within the time and in the
 28 form as may be prescribed by the legislative body by rule.

29 (d) The commission shall, on the request of the legislative body,
 30 transmit to the legislative body all documents, plans, and papers
 31 constituting the record of the action from which an appeal was
 32 taken. Certified copies of the documents, plans, and papers
 33 constituting the record may be transmitted.

34 (e) The legislative body may accept into evidence the written
 35 record, if any, of the hearing before the commission, along with
 36 other evidence introduced by the commission staff or interested
 37 parties. The legislative body shall consider the matter de novo.

38 (f) Upon appeal, the legislative body may reverse, affirm, or
 39 modify the requirement, decision, or determination appealed from.
 40 For this purpose, the legislative body has all the powers of the
 41 commission and is subject to sections 9(c), 9(d), 9(e), and 10(b) of
 42 this chapter in making its decision.

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(g) The legislative body shall make a decision either:

- (1) at the meeting at which that matter is first presented; or
- (2) at the conclusion of the hearing on that matter, if it is continued.

(h) Within five (5) days after making any decision, the legislative body shall file in the office of the commission a copy of its decision.

(i) If the legislative body determines that the proposed construction, reconstruction, alteration, or demolition will be appropriate, the president of the legislative body shall issue a certificate of appropriateness to the applicant.

SECTION 6. IC 36-7-11.1-10.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 10.6. (a) The legislative body shall fix a reasonable time for the hearing of appeals under section 10.5 of this chapter.**

(b) Public notice in accordance with IC 5-3-1-2 and IC 5-3-1-4 and due notice to interested parties shall be given at least ten (10) days before the date set for the hearing.

(c) The party taking the appeal may be required to assume the cost of public notice and due notice to interested parties. At the hearing, each party may appear in person, by agent, or by attorney.

(d) The legislative body shall, by rule, determine who are interested parties, how notice is to be given to them, and who is required to give that notice.

(e) The commission staff may appear before the legislative body at the hearing and present evidence in support of or in opposition to the granting of a certificate of appropriateness or the determination of any other matter.

(f) A person may not communicate with any member of the legislative body before the hearing with intent to influence the member's action on a matter pending before the legislative body. Not less than five (5) days before the hearing, the commission may file with the board a written statement setting forth any facts or opinions relating to the matter.

(g) The legislative body may require any party adverse to any pending petition to enter a written appearance specifying the party's name and address.

SECTION 7. IC 36-7-11.1-10.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 10.7. (a) Every determination of the legislative body upon an application for certificate of**

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1 appropriateness is subject to review by certiorari upon petition to
 2 the circuit or superior court of the county by any aggrieved person,
 3 in the same manner and subject to the same limitations as a
 4 decision of a board of zoning appeals under IC 36-7-4. However,
 5 upon notice of the filing of the petition for writ of certiorari, all
 6 proceedings and work on the subject premises are automatically
 7 stayed.

8 (b) An appeal may be taken to the court of appeals of Indiana
 9 from the final judgment of the court reversing, affirming, or
 10 modifying the determination of the commission in the same
 11 manner and upon the same terms, conditions, and limitations as
 12 appeals in other civil actions.

13 SECTION 8. [EFFECTIVE JULY 1, 2010] (a) As used in this
 14 SECTION, "commission" refers to the historic preservation
 15 commission appointed under IC 36-7-11.1-3, as amended by this
 16 act.

17 (b) This SECTION applies to a determination by the
 18 commission upon an application for a certificate of
 19 appropriateness that:

20 (1) is pending before the commission; or

21 (2) has been rendered by the commission and for which:

22 (A) a petition for certiorari has not been filed; and

23 (B) the period for filing a petition for certiorari has not
 24 expired.

25 (c) After the close of business on June 30, 2010, any appeal of a
 26 decision described in subsection (b) must be filed with the
 27 legislative body of the county.

28 (d) This SECTION expires July 2, 2011.

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